



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

SEP 27 2005

AE-17J

Robert Burrows, President  
B & B Metals Processing Co., Inc.  
14520 Pioneer Road  
Newton, WI 53063

Re: In the Matter of B&B Metals  
Processing Co., Inc.  
CAA Docket No.

CAA-05-2005 0054 *rw*

Dear Mr. Burrows:

I have enclosed a complaint filed against B&B Metals Processing Co., Inc., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of 40 C.F.R. Part 63 Subpart RRR, the secondary aluminum production National Emissions Standards for Hazardous Air Pollutants (NESHAP).

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Deborah Carlson, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-6121.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosures

cc: Bill Baumann, Chief, Compliance and Enforcement Section  
Bureau of Air Management, Wisconsin DNR

David Hildreth, Regional Leader, Northeast Region, Bureau of  
Air Management, Wisconsin DNR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-05- 2005 0054
	)	
B&B Metals Processing Co., Inc.	)	Proceeding to Assess a Civil
Newton, Wisconsin	)	Penalty under Section 113(d)
	)	of the Clean Air Act,
Respondent.	)	42 U.S.C. § 7413(d)
	)	
_____	)	

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is B&B Metals Processing Co., Inc., a corporation doing business in Wisconsin.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production facilities at 40 C.F.R. Part 63, Subpart RRR.

5. The NESHAP, at 40 C.F. R. § 63.1500, applies to the owner or operator of each secondary aluminum production facility as defined in Section 63.1503.

6. The NESHAP for Secondary Aluminum Production applies to B & B Metals.

7. Pursuant to 40 C.F.R. § 63.1500(c), the requirements of Subpart RRR pertaining to dioxin and furan (D/F) emissions and the associated operating, monitoring, reporting and recordkeeping requirements apply to affected sources, located at each new and existing facility that is an area source of hazardous air pollutants as defined in 40 C.F.R. § 63.2, including among other things, furnaces defined as group 1 furnaces in the NESHAP.

8. U.S. EPA issued a Finding of Violation to B & B Metals on September 24, 2004, citing specified violations of the secondary aluminum production NESHAP.

9. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have

determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

### **General Allegations**

12. B & B Metals owns and operates a secondary aluminum production facility at 14520 Pioneer Road, Newton, Wisconsin. B & B Metals' facility includes a Group 1 furnace, as defined at 40 C.F.R. § 63.1503.

13. B & B Metals' Newton facility is subject to the requirements at 40 C.F.R. Part 63, Subpart RRR. B & B Metals is an area source for Hazardous Air Pollutants (HAPs).

### **Count I**

14. Complainant incorporates paragraphs 1 through 13 of this complaint, as if set forth in this paragraph.

15. By March 24, 2003, B & B Metals was required to submit an initial notification, stating that its facility was subject to the NESHAP Secondary Aluminum Production Requirements. B & B Metals failed to submit this initial notification in a timely manner, in violation of 40 C.F.R. 63.1515(a).

### **Count II**

16. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

17. By May 24, 2003, B & B Metals was required to submit a notification of compliance status. B & B Metals failed to submit that notification in a timely fashion, in violation of 40 C.F.R. § 63.1515(b).

**Count III**

18. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

19. By March 24, 2003, B & B Metals was required to perform initial performance tests on its affected emission source. B & B Metals did not conduct such a test in a timely fashion, in violation of 40 C.F.R. § 63.1511(b).

**Count IV**

20. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

21. By March 24, 2003, B & B Metals was required to prepare and implement an Operation, Maintenance, and Monitoring (OM&M) Plan. B & B Metals did not prepare or implement an OM&M plan in a timely fashion, in violation of 40 C.F.R. § 63.1510(b).

**Count V**

22. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

23. By March 24, 2003, B & B Metals was required to develop and implement an approved written Startup, Shutdown, and Malfunction (SSM) Plan. B & B Metal did not develop or implement an SSM plan in a timely fashion, in violation of 40 C.F.R. § 63.1516(a).

**Count VI**

24. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

25. By October 24, 2003, B & B Metals was required to submit its first Excess Emission/Summary Report. B & B Metals

failed to submit its report in a timely fashion, in violation of 40 C.F.R. § 63.1516(b).

#### **Count VII**

26. Complainant incorporates paragraphs 1 through 13 of this Complaint, as if set forth in this paragraph.

27. B & B Metals failed to operate all new and existing affected sources and control equipment according to the operating requirements in Subpart RRR in violation of 40 C.F.R. § 63.1506(b).

#### **Proposed Civil Penalty**

28. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

29. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$96,572. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

30. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

**Rules Governing This Proceeding**

31. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

32. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

33. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Deborah Carlson, ORC Attorney, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Deborah Carlson at (312) 353-6121. Deborah Carlson's address is:

Deborah Carlson (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

**Penalty Payment**

34. Respondent may resolve this proceeding at any time by

paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Deborah Carlson and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

#### **Opportunity to Request a Hearing**

35. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 37 through 40 below.

#### **Answer**

36. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an

answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 34, above, and must serve copies of the written answer on the other parties.

37. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

38. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

39. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

40. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 35 above.

41. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

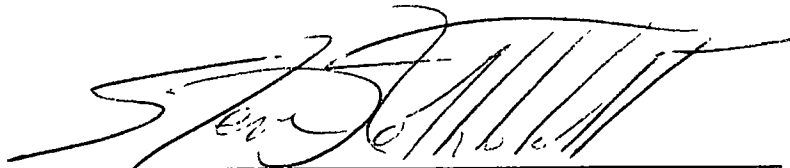
42. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Deborah Carlson at the address or phone number specified in paragraph 33, above.

43. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

44. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/27/2005  
Date



Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CAA-05- 2005 0054

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In the Matter of B&B Metals Processing Co., Inc.  
Docket No.

CAA-05- 2005 0054 *SBW*  
CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [ ] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Robert Burrows  
B & B Metals Processing Co., Inc.  
14520 Pioneer Road  
Newton, WI 53063

John Heyde  
Sidley Austin Brown & Wood LLP  
10 S. Dearborn Street  
Chicago, IL 60603

on the 28<sup>th</sup> day of September, 2005.

*Shanee Rucker*  
\_\_\_\_\_  
Shanee Rucker, Secretary  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 0006 14478805